VIZR.10001NP Patent Amendment

REMARKS

This application has been carefully reviewed in light of the Office Action dated June 16, 2005. Applicants has amended claims 7, 11, 17, 21 and 24. Reconsideration and favorable action in this case are respectfully requested.

The Examiner has rejected claims 1, 3-11 and 13-26 under 35 U.S.C. §101 as being directed to non-statutory subject matter for lack of recitation of technology in the bodies of the claims. The Examiner states that the Office has determined that claims that do present a "technological basis" in the preamble and body and the claim may be interpreted in an alternative as involving no more than a manipulation of an abstract idea and are therefore non-statuatory.

Applicants have amended the method claims (specifically, claims 11, 21 and 24) similar to the suggestion of the Examiner. However, the apparatus claims (independent claims 1 and 26) specifically recite circuitry and it is inherent in the body of the claims how the circuitry of the preamble is implemented. Applicants see no credible manner in which "*employer management circuitry* for ...receiving information regarding sales...calculating settlement amounts... and generating an investment database..." could be interpreted as a "manipulation of an abstract idea".

The Examiner has rejected claims 7-9 and 17-19 under 35 U.S.C. 112, second paragraph. Applicants have changed the dependency of claims 7 and 17 to claims 5 and 15, as suggested by the Examiner.

The Examiner has rejected claims 21-25 under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,041,313 to Gilbert. Applicants respectfully disagree.

In order for a claim to be anticipated under 35 U.S.C. 102, the reference, Gilbert, would need to show every element of the claim. The Gilbert reference has no teaching of allowing an employee to associate from a first employer to a second employer. The

Examiner justifies the rejection by stating that "adding and removing employees is quite easy" and that "employees are reference[d] by their Social Security number.

First, the element of "upon movement of said employee from said first employer to a second employer, associating said account with said employee and said second employer" (claim 21) is simply not even contemplated in Gilbert.

Second, the Examiner's justification that adding and removing employees in Gilbert is "easy" is not relevant - there is no "easy" standard for rejecting claims under 35 U.S.C. 102 or 35 U.S.C. 103. Under section 102, each element of the claim must be disclosed - the previously recited element is not even hinted at in Gilbert. Under section 103, the standard is "obvious", not "easy".

Third, "adding and removing" is exactly the process that the invention defined in claim 21 eliminates; an employee can simply re-associate his account with a new employer without the following steps that would be necessary under Gilbert: "removing" an account at the old employer, getting a disbursement of the account holdings, starting a new account at the new employer, and adding the previous disbursement to the new account.

Independent claim 24 is allowable under the same reasoning as provided above for claim 21.

The Examiner has rejected claims 1-26 under 35 U.S.C. 103(a) as being unpatentable over Gilbert, in view of U.S. Pat. No. 5,933,812 to Meyer. The Examiner states that Gilbert does not expressly teach a system and method that calculates or maintains gratuity income totals. The Examiner uses Meyer as a reference that teaches an apparatus that allows a restaurant server to electronically maintain earned gratuities.

Applicants do not dispute that prior art devices calculate settlement amounts. As described in the application, prior art devices calculate a settlement amount *without*

accounting for any investment withholding. The Examiner is ignoring important language in the claims. Claim 1, for example, recites "employer management circuitry for ...calculating settlement amounts for employees according to predefined preferences for withholding investment". Neither Gilbert nor Meyer shows a device with this feature. The Examiner states that this feature is shown in Gilbert at col 5, lines 8-16 and col. 7, lines 50-57. Neither of these passages even discusses settlement amounts, much less calculating the settlement amount based on withholding preferences. The passage at col. 5 discusses employee set up, without discussing withholding preferences, and the passage at col. 7 discusses allocation of investments among different mutual funds. Since Gilbert has nothing to do with settlement, and is directed only to investments, there would be no reason for Gilbert teach anything regarding calculating a settlement amount according to withholding preferences.

Similarly, Meyer has nothing to do with investments, and has no teaching of calculating settlements according to withholding preferences.

Thus, even when Meyer and Gilbert are combined, the element of "employer management circuitry for ...calculating settlement amounts for employees according to predefined preferences for withholding investment" is not shown.

For reasons stated above with regard to independent claim 1, Applicants believe the remaining claims are allowable as well. In independent claim 11, the element of "calculating settlement amounts for employees according to predefined preferences for withholding investment amounts" is not shown in either Gilbert or Meyer. In independent claim 26, the "employer management circuitry for ...calculating settlement amounts for the employees according to individual investment preferences for withholding investment amounts defined by the employees" is not shown in either Gilbert or Meyer.

While the Examiner rejected claims 21-25 under 35 U.S.C. 103, there is no further explanation of this rejection and, therefore, Applicants assume that the rejection under section 102 was intended as the sole rejection of these claims. If Applicants are incorrect in this assumption, Applicants believe that claims 21-25 are allowable for reasons set forth in the section 102 rejection. Further, since Meyer is directed to a point of sale device without any investment features, it would have no additional teaching relevant to the element of "upon movement of said employee from said first employer to a second employer, associating said account with said employee and said second employer."

An extension of two months is requested and a Request for Extension of Time under § 1.136 with the appropriate fee is attached hereto.

The Commissioner is hereby authorized to charge any fees or credit any overpayment, including extension fees, to Deposit Account No. 01-1615 of Anderson, Levine & Lintel, L.L.P.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Alan W. Lintel, Applicants' Attorney at (972) 664-9595 so that such issues may be resolved as expeditiously as possible.

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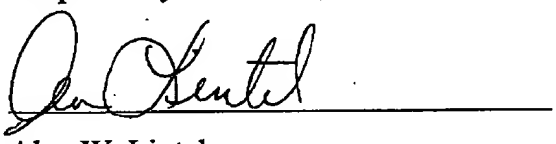
For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,



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